



W.P.(MD) Nos.13164 and 13166 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) Nos.13164 and 13166 of 2020

Ratna Middle School,
E-Meenakshipuram-627 859,
V.K.Pudur Taluk,
Tirunelveli District.

... Petitioner
in both W.Ps.

Vs.

- 1.The Joint Director of School
Education (Aided Schools),
College Road,
Chennai-600 006.
- 2.The Chief Educational Officer,
Tirunelveli.
- 3.The District Educational Officer,
Tenkasi,
Tirunelveli District.
- 4.The Block Educational Officer,
Keelapavoor Block,
Pavaoorchataram,
Tirunelveli District.

... Respondents
in both W.Ps.



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Prayer in W.P.(MD) No.13164 of 2020: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned proceedings of the 3rd respondent in Na.Ka.No.3051/Aa3/2019, dated 20.03.2020 and quash the same consequently directing the Respondents Nos.3 and 4 to accord permission to fill up the vacant post of B.T (Maths) by upgrading the vacant post of secondary grade teacher as per G.O.Ms.No.144, dated 04.07.2008 in the petitioner school namely Ratna Middle School, E-Meenakshipuram, Surandai, Tirunelveli District as per the proposal submitted by the petitioner school dated 14.02.2019 and resubmitted on 13.12.2019.

Prayer in W.P.(MD) No.13166 of 2020: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned proceedings of the 3rd respondent in Na.Ka.No.3052/Aa3/2019, dated 20.03.2020 and quash the same consequently directing the Respondents Nos.3 and 4 to accord permission to fill up the vacant post of Secondary Grade Teacher in the petitioner school namely Ratna Middle School, E-Meenakshipuram, Surandai, Tirunelveli District as per the proposal submitted by the petitioner school dated 02.01.2019 and resubmitted on 13.12.2019.



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In both W.Ps.

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.V.Om Prakash
Government Advocate

COMMON ORDER

The petitioner in both the writ petitions, which is the School Management, approached this Court by filing these two writ petitions aggrieved by the orders passed by Respondent No.3 refusing to grant prior approval for filling up the post of B.T. Assistant (Maths) and Secondary Grade Teacher respectively by passing the impugned orders dated 20.03.2020 on the ground that there are surplus staff available at the District Level identified from various other non-minority aided schools and the vacancies that arose in the petitioner-School are required to be filled up from the said pool of surplus Teachers.

2. It is the case of the petitioner that the petitioner herein is a stand alone minority educational institution and it has no other institution under its



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control. Hence, according to the petitioner, the question of filling up the vacancies that arose in the petitioner-School from out of the surplus pool at the District Level does not arise.

3. It is contended by the learned counsel for the petitioner that the impugned orders came to be issued in the light of the Government Order issued in G.O.(Ms) No.165, School Education [Tho.Ka.2(1)] Department, dated 17.09.2019, which was issued pursuant to an interim order passed in W.A.(MD) No.76 of 2019 and batch, dated 09.04.2019. It is further contended that the said G.O.(Ms) No.165, dated 17.09.2019 came to be declared as in-operative by the final orders passed in W.A.(MD) No.76 of 2019 and batch, dated 31.03.2021 and therefore, the reasoning given in the impugned orders, while rejecting to grant prior approval, is totally unsustainable. The learned Division Bench while disposing of W.A.(MD) No.76 of 2019 and batch has laid down certain guidelines, which are required to be followed by the respondents in the matter of filling up vacancies in the minority and non-minority educational institutions and the judgment in W.A. (MD) No.76 of 2019 batch was also confirmed by the Hon'ble Apex Court in



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S.L.P.(C) No.15702 of 2021, by order dated 16.02.2024. Thus, the learned counsel for the petitioner contended that in terms of the judgment passed in W.A.(MD) No.76 of 2019 and batch, the petitioner is entitled for grant of approval for filling up the posts in question without waiting for filling up the same from the surplus pool at the District Level.

4. The learned Division Bench in the said judgment dated 31.03.2021 passed in W.A.(MD) No.76 of 2019 and batch, at sub-para (v) of para 95, held as under:

“95(v) Like that insofar as aided minority institutions are concerned, if it is a stand alone institution, their right of appointing a teacher in a vacancy within the sanctioned strength for the academic year 2021-22 shall not be affected because of the identified excess teachers in other schools. At the same time, even if the school is a minority institution, however being administered by a joint management or corporate management, in respect of those schools, even though vacancy arose within the sanctioned strength of such school or schools under corporate management or joint



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management, those vacancies shall not be filled up unless the excess staff identified in all other schools under the same corporate or joint management are exhausted fully and only after exhausting the redeployment process on all excess teachers identified in the group of schools under the same corporate management, they shall be free to make appointment afresh from open market in the vacancy if any still, within the sanctioned strength."

5. From the above judgment, it is evident that the stand alone institution was sought to be treated differently and the question of filling up the vacancy from out of the surplus pool at the District Level or otherwise does not arise. On the other hand, stand alone institutions were allowed to fill up the vacancies without reference to surplus Teachers. No doubt, the abovesaid paragraph deals with aided minority institution but the same analogy would equally applicable to the non-minority stand alone institution as well.

6. Then coming to the contention of the learned Government Advocate by placing reliance on a decision in W.A.(MD) No.1780 of 2023,



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dated 06.12.2023 is concerned, the said judgment is also in tune with the judgment in W.A.(MD) No.76 of 2019 and batch only. However, it is further stated that filling up of the vacancies should be subject to availability of required student strength and necessity of filling up of such vacancies at the relevant time. Insofar as two vacancies that arose in the petitioner-School which are subject matter of the writ petition is concerned, there is no dispute that there is sufficient strength available for filling up of these two vacancies and therefore, the same may not come in the way of the petitioner in seeking prior approval for filling up of the said vacancies.

7. In the light of the above, the impugned orders passed in both the writ petitions are unsustainable and accordingly, they are aside. The petitioner is granted liberty to seek a fresh approval from Respondent No.3 by submitting required proposal. In case, if any such proposal is submitted by the petitioner for filling up the posts of B.T. Assistant and Secondary Grade Teacher in the petitioner-School, the same shall be considered by Respondent No.3 in the light of the observations made hereinabove and appropriate orders be passed granting approval as expeditiously as possible,



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at any rate, within a period of eight weeks from the date of receipt of a copy of this order.

8. This Writ Petition is allowed to the extent indicated above. No costs.

14.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



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MUMMINENI SUDHEER KUMAR, J.

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